

⁴
United States
Circuit Court of Appeals
For the Ninth Circuit.

SAMUEL C. PANDOLFO,

Plaintiff in Error,

vs.

BANK OF BENSON, a Corporation et al.,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Arizona.

FILED

FEB - 5 1921

F. D. MONTGOMERY

United States
Circuit Court of Appeals
For the Ninth Circuit.

SAMUEL C. PANDOLFO,
Plaintiff in Error,
vs.
BANK OF BENSON, a Corporation et al.,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Arizona.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Petition.....	3
Answer of Bank of Benson et al.....	13
Answer of Morris Goldwater.....	29
Assignments of Error.....	59
Bond on Writ of Error.....	59
Certificate of Clerk U. S. District Court to Transcript of Record.....	77
Citation (Copy)	72
Citation (Original)	85
Demurrer of Bank of Benson et al.....	13
Demurrer of Morris Goldwater.....	29
Judgment.....	53
Minutes of Court—March 9, 1920—Order Granting Motion to Strike and Sustaining Demurrer	45
Minutes of Court—April 20, 1920—Judgment..	53
Motion, Defendants', for Judgment.....	49
Motions, Demurrers and Answer to Complaint..	11
Motions, Demurrers and Answer of Morris Goldwater to the Amended Complaint.....	28
Motions to Strike of Bank of Benson et al.....	11
Motions to Strike of Morris Goldwater.....	28
Names and Addresses of Attorneys of Record...	1

Index.	Page
Notice of Motion for Judgment.....	46
Order Granting Motion to Strike and Sustaining Demurrer.....	45
Plea in Abatement of Morris Goldwater.....	29
Petition for Writ of Error and Order Allowing Same.....	56
Praecipe for Transcript of Record.....	76
Return of Writ of Error (Copy).....	70
Return of Writ of Error (Original).....	82
Writ of Error from Circuit Court of Appeals to United States District Court for the District of Arizona (Copy).....	67
Writ of Error from Circuit Court of Appeals to United States District Court for the Dis- trict of Arizona (Original).....	79

Names and Addresses of Attorneys of Record.

Messrs. JONES, HOCKER, SULLIVAN &
ANGERT, of St. Louis, Mo.,

Messrs. ALEXANDER & CHRISTY, Phoenix,
Arizona,

Attorneys for the Plaintiff in Error.

Messrs. ARMSTRONG, LEWIS & KRAMER,
Phoenix, Arizona,

Messrs. BULLARD & JACOBS, Phoenix, Arizona,
Attorneys for Defendants in Error. [2*]

UNITED STATES OF AMERICA,—ss.

District Court of the United States Within and for
the District of Arizona, at Phoenix.

April Term, 1919.

No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of
Bisbee, a Corporation, Citizens Bank & Trust
Co., a Corporation, Miners & Merchants
Bank, a Corporation, Buckeye Valley Bank,
a Corporation, Casa Grande Valley Bank, a
Corporation, Bank of Chandler, a Corpora-
tion, Bank of Duncan, a Corporation, Bank
of Douglas, a Corporation, Arizona Central

*Page-number appearing at foot of page of original certified Transcript
of Record

Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, (1) Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, [3] Citizens Bank a Corporation, Mer-

chants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,

Defendants.

Amended Petition.

Comes now the said plaintiff with leave of the Court first had, and files this his amended petition and alleges:

That the plaintiff is a citizen of the State of Minnesota, residing in the county of Stearns in said State.

That the defendants, Bank of Benson, Bank of Bisbee, Citizens Bank & Trust Co., Miners & Merchants Bank, Buckeye Valley Bank, Casa Grande

Valley Bank, Bank of Chandler, Bank of Duncan, Bank of Douglas, Arizona Central Bank, The Citizens (2) Bank, Glendale State Bank, Security State Bank, Pinal Bank & Trust Co., Old Dominion Com. Co., Merchants & Stock Growers Bank, Holbrook State Bank, Bank of Jerome, Bank of Lowell, Mesa City Bank, Salt River Valley Bank, State Bank of Metcalf, Bank of Miami, Gila Valley Bank & Trust Co., State Bank of Morenci, Santa Cruz Valley Bank & Trust Co., Sonora Bank & Trust Co., Bank of Oatman, The Commercial Bank, Payson Com. & Trust Co., Central Bank of Phoenix, Citizens State Bank, Phoenix, Savings Bank & Trust Co., Valley Bank, Bank of Arizona, Commercial Trust & Savings Bank, Yavapai County Savings Bank, Bank of Safford, St. Johns State Bank, San Simon Valley Bank, Bank of Northern Arizona, Bank of Superior, Farmers & Merchants Bank, Citizens Bank, Merchants Bank & Trust Co., Southern Arizona [4] Bank & Trust Co., Willcox Bank & Trust Co., Williams State Bank, Bank of Winslow and Arizona State Bank are all banking corporations organized under the laws of the State of Arizona, and citizens of said State, with their respective offices and places of business at the cities of Benson, Bisbee, Bisbee, Bisbee, Buckeye, Casa Grande, Chandler, Duncan, Douglas, Flagstaff, Flagstaff, Glendale, Glendale, Florence, Globe, Holbrook, Holbrook, Jerome Lowell, Mesa, Mesa, Metcalf, Miami, Morenci, Morenci, Nogales, Nogales, Oatman, Parker, Payson, Phoenix, Five Points, Phoenix, Phoenix, Phoenix, Prescott, Prescott, Prescott, Safford,

St. Johns, San Simon, Snowflake, Superior, Tempe, Thatcher, Tucson, Tucson, Willcox, Williams, Winslow and Winslow, in the State of Arizona.

The defendants, First National Bank, of Clifton, First National Bank of Globe, First National Bank of Douglas, First National Bank of Nogales, National Bank of Arizona, Phoenix National Bank, Prescott National Bank, Tempe National Bank, First National Bank of Tombstone, Arizona National Bank, Consolidated National Bank, First National Bank, of Yuma, and (3) Yuma National Bank are banking corporations organized under the laws of the United States, conducting their respective banking businesses at the cities of, respectively, Clifton, Globe, Douglas, Nogales, Phoenix, Phoenix, Prescott, Tempe, Tombstone, Tucson, Tucson, Yuma, and Yuma, in the State of Arizona and are all citizens of said State and that the defendant Morris Goldwater, is a resident of the city of Prescott in the State of Arizona and a citizen of said State.

Plaintiff states that at all the times hereinafter mentioned, and long prior thereto, the defendants were, and now are, banking corporations, duly organized and existing as aforesaid, and, as such, have long prior to the matters hereinafter referred to heretofore organized themselves into and at all the times herein mentioned, and now, conduct and operate a voluntary association known as the Arizona Bankers' Association, of which all the defendants, at all the times hereinafter mentioned, and long prior thereto, were members, except the defendant Morris Goldwater, who [5] is an individual and

who at all the times hereinafter mentioned and long prior thereto was, and now is, the secretary of said Arizona Bankers' Association.

Plaintiff further states that said defendants, under said style of Arizona-Bankers' Association, were and are engaged in the business of printing and publishing a certain book and pamphlet called "Proceedings of the Arizona Bankers' Association," and that said defendant, Morris Goldwater, as the secretary of said Arizona Bankers' Association, knowingly acted with the said Arizona Bankers' Association in printing and publishing and distributing the said book and pamphlet so printed and published containing said proceeding of said Arizona Bankers' Association, to the Public.

That said book and pamphlet was at all such times printed and published yearly by said Arizona Bankers' Association assisted by Morris Goldwater, defendant, and was by them largely circulated (4) throughout the States of Arizona, Texas, New Mexico, California, and Illinois, and particularly throughout the entire states of Arizona and New Mexico, where the plaintiff is well known, and throughout the United States of America generally, and was widely read by bankers and business men generally.

Plaintiff states that he has at all times conducted and demeaned himself as an honest and upright citizen of the United States of America, and of the States of New Mexico, Texas and Minnesota, where he had resided during the past few years; that ever since the — day of ———, 1917, he has been employed as the President of the Pan Motor Company,

an automobile manufacturing company organized and existing under and by virtue of the laws of the State of Delaware, and having its principal office in the city of St. Cloud, in the State of Minnesota.

Plaintiff further states that until the commission of the several grievances by the defendants hereinabove set forth he was well reputed, esteemed and accepted by and among his neighbors and acquaintances to whom he was known throughout the states hereinbefore mentioned, and throughout the United States, as a person of good name, fame and credit and as a business man and a corporation officer of honestly integrity and fidelity. [6]

And plaintiff alleges that defendants, well knowing such fact, and intending, wickedly and maliciously, to injure the plaintiff in his good name, fame and credit as an individual and as a business man and corporation officer, and as such, to bring him into public hatred, scorn, ridicule, contempt, infamy and disgrace, and to deprive him of the benefits of public confidence, and to cause it to be believed by his business associates and among good and worthy citizens of the United States that plaintiff had been guilty of corrupt, dishonest, dishonorable and criminal conduct in and about the discharge of his duties as a corporation officer and in and about the transaction of financial matters and as a business man, and in the transaction of insurance business in the State of Texas (in which he had been previously employed); and in (5) order to cause it to be believed by said hereinbefore mentioned persons that the plaintiff had been guilty of criminal conduct and practices,

of embezzlement and theft, and obtaining money under false pretenses in and about the transaction and discharge of financial matters; and in order to cause it to be believed by said persons hereinbefore mentioned, and the public generally, that the plaintiff had been guilty of a violation of the criminal laws of the state of Texas, New Mexico and Arizona, and had been guilty of the crimes of embezzlement, theft, larceny, obtaining money under false pretenses and of violating the insurance laws of the State of Texas, by directly or indirectly unlawfully taking, receiving or retaining moneys legally belonging to other persons, and of writing insurance in the State of Texas in violation of the law; and intending to vex, oppress, impoverish and wholly ruin the plaintiff, did, on or about the —— day of May, 1918, in Volume 10 of the book or pamphlet known as the “Proceedings of the Arizona Bankers’ Association,” publish and cause and procure to be published of *an* concerning the plaintiff a certain false, wicked, malicious, defamatory and libelous article, as follows, to wit: [7]

“The SECRETARY.—Mr. President, before you take up any other matters, I have a letter here that I want to read. This is a letter addressed to the Secretary of the Arizona Bankers’ Association and also to the Secretary of the New Mexico Association. It says:

Mr. Morris Goldwater, Secretary State Bankers’ Association, Prescott, Arizona.

Mr. J. C. Christensen, Secretary Bankers’ Association, Raton, New Mexico.

Gentlemen: You have operating in Arizona and

New Mexico one Mr. S. C. Pandolfo, who recently moved from San Antonio. I am writing you gentlemen with reference to this man Pandolfo, as he is a double-barrelled crook. The Commissioner of Insurance of Texas revoked his license outright and refused him the privilege of writing Insurance in Taxes on account of him continuously violating the law. Out Banking Commissioner forbade State banks from buying paper from this fellow, or in any manner taking obligations in which he was interested.

He has crooked more people and in more ways than most any fellow we have ever had in this part of the country in a long time. I believe that it is only just to the bankers in your State that you tip them off (6) to this fellow. If you do not he is certainly going to hang a lot of them before he is found out. He is one of the crookedest white men I have ever seen. His present address, I understand, is at Tucumcari, and he is promoting some kind of an Automobile Insurance Company, the results of which that he will be getting a lot of money out of the promotion and the company will be broke about the time it shall begin its operation.

Yours very truly,

President.

It is such a letter that I did not care to put it in print and send it out as a warning, as I did not know but what I might be held up and libeled for something, so I thought I would read it here to you all.”

[8]

And, having so published said false, defamatory

and libelous matter of and concerning the plaintiff, the defendants circulated the same and caused it to be circulated among business men, bankers and others throughout the States of Arizona, Texas, New Mexico, California, Illinois and other States of the United States.

Plaintiff alleges that the defendants well knew that said statements so published of and concerning the plaintiff, as aforesaid, were absolutely false and untrue, and that the same were published with the malicious and express intent of defaming and injuring the plaintiff.

Plaintiff further says that said book and pamphlet in which said libelous article was so published as aforesaid is a book and pamphlet of large circulation, as hereinbefore alleged, and is generally considered of great influence and power among banking institutions throughout the United States of America, and that the defendants, the publishers of said book and pamphlet, are reasonable worth more than Fifty Million Dollars (\$50,000,000.00).

WHEREFORE, plaintiff says that, by reason of the premises, he has been brought into public hatred, scorn, ridicule, contempt, infamy and disgrace; has been deprived of the benefits of public confidence, both as an individual and as a corporate (7) employee and officer; has suffered great humiliation and mental pain and anguish, and has grievously suffered in his reputation and has been damaged by the libelous publication so made of and concerning him by the defendants, as aforesaid, in the sum of Five Hundred Thousand Dollars (\$500,000.00) as actual

damages, and in the further sum of Five Hundred Thousand Dollars (\$500,000.00) as punitive damages, for which he prays judgment, with his costs.

JONES, HOCKER, SULLIVAN & AN-
GERT,

ALEXANDER & CHRISTY,

Attorneys for Plaintiff. (8)

[Indorsements]: Amended Petition. Rec'd copy of the within amended petition this 15 day of April, 1919. Armstrong, Lewis & Kramer, Attorneys for Original Defendants. Filed Apr. 15, 1919. Mose Drachman, Clerk. By Nat. T. McKee, Deputy. [9]

In the District Court of the United States for the
District of Arizona.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON et al.,

Defendants.

Motions, Demurrers and Answer to Complaint.

Come now the defendants named in the complaint herein, by their attorneys, Armstrong, Lewis & Kramer, and severing as to their defense, separately plead to the complaint of plaintiff herein as follows:

Motions to Strike.

I.

Each defendant moves the Court to strike from line

24, page 5, of the complaint the words “criminal conduct” as surplusage.

II.

Each defendant further moves the Court to strike from the complaint the following words in lines 30, 31 and 32, page 5, and line 1, page 6 of the complaint, to wit: “criminal conduct and practices of embezzlement and theft, and obtaining money under false pretenses in and about the transaction and discharge of financial matters,” as surplusage.

III.

Each defendant further moves the Court to strike from the complaint the following words in lines 2, 3 and 4, page 6 of said complaint, to wit: “that the plaintiff had been guilty (1) of the violation of the criminal laws of the state of Texas, New Mexico and Arizona,” as surplusage.

IV.

Each defendant further moves the Court to strike from the complaint the following words found in lines 4, 5 and 6, page 6 of the complaint, to wit: “and had been guilty of the crimes of embezzlement, theft, larceny, obtaining money [10] under false pretences”, as surplusage.

V.

Each defendant further moves the Court to strike from the complaint the following words found in lines 7, 8 and 9, page 6 of said complaint, to wit: “by directly or indirectly unlawfully taking, receiving or obtaining moneys legally belonging to other persons” as surplusage.

Demurrer.

Without waiving said motions, each defendant separately demurs to said complaint upon the ground that said complaint wholly fails to state facts sufficient to constitute a cause of action as against it.

Wherefore, each defendant prays that said complaint be dismissed as to it and that it recover its costs.

Answer.

Without waiving said motions to strike or said demurrer, the defendants severing in their answer each pleads to the complaint of plaintiff separately as follows:

I.

That the cause of action stated in the complaint did not accrue within one year before the commencement of this action, and is therefore barred by the provisions of paragraph (2) 709, Revised Statutes of Arizona, 1913.

II.

That the cause of action stated in the complaint as to all publications whatsoever, except as to the alleged publication in May, 1918, which publication is not admitted but expressly denied, did not accrue within one year before the commencement of this action and are, and each of them is, therefore, barred by the provisions of paragraph 709, Revised Statutes of Arizona, 1913. [11]

III.

Each defendant, without admitting but, on the contrary, expressly denying, the publication of the

said alleged libelous matter set forth in said complaint, says that prior to May, 1918, the State Securities Commission of the State of Minnesota had, pursuant to the laws of Minnesota in such cases made and provided and in the exercise of its jurisdiction thereunder, issued to a corporation known as the Pan Motor Company an order to show cause why the license of said corporation to sell its stock should not be revoked. That Samuel C. Pandolfo, the plaintiff herein, was at said time the president of said Pan Motor Company. That said Commission, as was its duty to do, had under investigation the character and business record of the said plaintiff, president of said Pan Motor Company, and in the course of said investigation the said Commission requested one Morris Goldwater, of Prescott, Arizona, to give to the said Commission all information in his possession touching the said character and business record of the said Samuel C. Pandolfo to the end that the said Commission might be fully advised in its action upon said order to show cause. That the said Morris Goldwater had in May, 1918, in his possession a copy of the alleged libelous matter set forth in the complaint herein and he, (3) the said Morris Goldwater, believing in the truth of the information so in his possession, furnished to the said State Securities Commission of Minnesota, as was his duty to do, said information and that said Goldwater so furnished said information without any malice whatsoever toward the said plaintiff and without the intent to injure the said plaintiff and in confidence to the said Commission alone without

the intent that anything in said matter so furnished by him as aforesaid should become or be made public.

Each defendant alleges that the furnishing of said copy of said alleged libelous matter set forth in the complaint herein to the said State Securities Commission of Minnesota was at the time thereof unknown to it; that it had no knowledge thereof until the filing of the complaint of plaintiff herein; that it never authorized, directly or indirectly, the furnishing [12] thereof and that it has never ratified the same; that such furnishing of said copy of said alleged libelous matter as aforesaid was not a duty of the said Morris Goldwater as Secretary of the Arizona Bankers' Association and was not within the scope of his duties as Secretary of the Arizona Bankers' Association, and was unknown to the said Arizona Bankers' Association at the time thereof and to and until the filing of the complaint herein and that said Arizona Bankers' Association has never approved or ratified the same.

IV.

Each defendant separately denies that it in any way or at any time whatsoever published the alleged libelous matter set forth in said complaint or any part thereof and denies that it authorized, approved or ratified the said alleged publication thereof. (4)

V.

Each defendant further separately alleges that the Arizona Bankers' Association is a voluntary, unincorporated association, formed by the banks of Arizona in order to promote the general welfare and

usefulness of banks and banking institutions and to secure uniformity of action, together with practical benefits to be derived from personal acquaintance and from the discussion of subjects of importance to the banking and commercial interests of this territory and for the protection against loss by crime. That said association is a nonprofit association. That the entering into of such association by this defendant corporation is the attempted exercise of a power not granted by its charter and therefore *ultra vires* and utterly void. That by the provisions of the constitution and by-laws of Arizona Bankers' Association it is expressly provided as follows:

“Sec. 2. No opinions expressed, principles advocated, theories advanced, or policies suggested by any party or person, however presented, shall be deemed to have had the indorsement of this Association except the question of so indorsing shall have been referred to a standing or special Committee; shall have been reported upon by such [13] Committee, and shall have been specifically voted upon, receiving a majority of the votes of those present at an open session of a Convention of the Association.

This item of the Constitution shall be published in every report of the proceedings of any convention, and where indorsements are given the fact shall be noted in the report of the proceedings in that behalf.”

That during the year 1916 Samuel C. Pandolfo, the plaintiff in the above-entitled action, was at-

tempting to do business in the State of Arizona and that his business reputation and character was a matter of mutual interest and concern to the members of the Arizona Bankers' Association. That prior to the annual meeting of the said Association held at Phoenix, Arizona, November 10 and 11, 1916, said time being more than one year prior to the commencement of this action, and any publication (5) thereat being therefore barred by the provisions of paragraph 709, Revised Statutes of Arizona, 1913, the then Secretary of said Association had received a letter regarding the plaintiff Samuel C. Pandolfo, being the letter set forth in said complaint, and the said Secretary, in reliance upon the mutual relation existing between the said members of said Association, in confidence and for the sole benefit and information of the said members and being reliably informed and believing said letter to truly state the facts, in good faith and in pursuance to duty, without malice or intent to injure the plaintiff, read the said letter to the members then present, but that said letter was not referred to a standing or special Committee, was not reported upon by any Committee and was not voted upon, or in anywise adopted, ratified or approved or made a part of the proceedings of said Association.

Each defendant separately denies that it published or caused or authorized the publication of the said letter as alleged in said complaint or otherwise or at all, and denies that it had any knowledge of the alleged publication until the filing of the complaint

herein and alleges that it never ratified or in any-wise approved the same. [14]

VI.

Without admitting publication, each defendant separately denies that it or the said Arizona Bankers' Association meant or were understood to mean by the alleged libelous matters set forth in the complaint that the plaintiff had been guilty of criminal conduct, or that the plaintiff had been guilty of criminal conduct in practices, of embezzlements and theft, and of obtaining money under false pretences in and about the transaction and discharge of financial matters, or that the plaintiff had been guilty of violation of the criminal laws of the States of Texas, (6) New Mexico and Arizona, or that the plaintiff had been guilty of the crimes of embezzlement, theft, larceny or obtaining money under false pretences, or of directly or indirectly unlawfully taking, receiving or obtaining moneys legally belonging to other persons.

VII.

Each defendant separately denies that prior to the commission of the several grievances alleged in said complaint to have been committed by the defendants, that plaintiff was either well reputed, esteemed or accepted by and among his neighbors or acquaintances as a person of good name, fame or credit, or as a business man or a corporate officer of honesty, integrity or fidelity, and each defendant separately alleges that the plaintiff's reputation, prior to the alleged publications complained of in the complaint herein, was, in the respects aforesaid, bad.

VIII.

Without admitting, but, on the contrary, expressly denying the publication or circulation of the alleged libelous matter set forth in the complaint herein, in further answer and in justification each defendant separately avers that the alleged libelous matter complained of is true.

That on or about June 27, 1916, the Department of Insurance and Banking of the State of Texas, acting by and through its Commissioner, John S. Patterson, revoked all licenses as life insurance agent theretofore granted to Samuel [15] C. Pandolfo, plaintiff herein, thereby revoking the privilege of the said Pandolfo of writing insurance in Texas and that said order was made and entered upon account of continuous violation by the said Pandolfo of the laws of Texas relating (7) to insurance.

That the Department of Insurance and Banking of the State of Texas, acting by and through its said Commissioner, John S. Patterson, on or about the said 27th day of June, 1916, forbade the banks of the State of Texas from buying so-called trust certificates, hereinafter more particularly described, issued by the said Pandolfo.

That the alleged libelous matter charged in the complaint, to wit, that the plaintiff Pandolfo is a crook and that he, the said Pandolfo, has crooked more people in more ways than most any fellow in this part of the country in a long time, was and is true in each and every part thereof, that is to say:

That the said Pandolfo, during the years 1911 and 1912, promoted the Alamo Life Insurance Company.

That the said Pandolfo in various parts of the State of Texas during said times and particularly at and about the cities of San Antonio, Alpino, Fort Stockton and El Paso, Texas, and from divers and sundry persons, amongst others, P. H. Pruett and J. A. Pruett, solicited subscriptions to the capital stock of the said Alamo Life Insurance Company proposed to be organized by the said Pandolfo under the laws of the State of Texas. That each of the defendants separately alleges upon information and belief that the said J. A. Pruett, upon the solicitation of the said Pandolfo, subscribed for Five Thousand Dollars worth of the capital stock of the Alamo Life Insurance Company, paying 25% down represented by Two Hundred Fifty Dollars cash and his promissory note for One Thousand Dollars, and that the said Pandolfo claimed the said amount of 25% of the said subscription as organization fees and that the said Pruett lost in said transaction Eight Hundred Fifty Dollars, no part of which (8) has ever been returned. That said P. H. Pruett, at the solicitation of the said Pandolfo, subscribed for Twenty-five [16] Thousand Dollars worth of the capital stock of the said Alamo Life Insurance Company and executed and delivered to the said Pandolfo his note therefor, which note has never been paid. That said company was never incorporated.

On information and belief that on or about the 7th day of July, 1915, one Felix P. Miller of El Paso, Texas, then was and now is, a practicing physician and surgeon in said city, was approached by the said plaintiff Pandolfo and that at the sollicita-

tion of the said Pandolfo the said Felix P. Miller executed and delivered his promissory note in favor of the said Pandolfo, said note being in the sum of Five Hundred Dollars and bearing interest at the rate of 8% per annum and maturing 6 months after date. That the said note was taken by the said Pandolfo and negotiated by him to the Rio Grande Valley Bank and Trust Company of El Paso, Texas. That in consideration of the making of said note the said Pandolfo agreed with the said Miller as follows: That the sum of \$227.25 was to be deposited in the Rio Grande Valley Bank and Trust Company of El Paso, Texas, at 4% interest, the interest accruing thereon to be applied to the credit of the said Miller until such time as the said interest equaled the sum of \$272.75, or a sum sufficient when added to the principal sum of \$227.25 on deposit to return to Dr. Felix P. Miller the original sum of \$500.00. That the remaining sum of \$272.25, which the said Pandolfo realized through the discounting of the note of the said Miller, was to be devoted by the said Pandolfo to the establishing in El Paso, Texas, of an agency representing three large life insurance companies, said agency to engage in the writing of life insurance. That the said Miller was to be appointed (9) Chief Medical Examiner for the life insurance agency to be formed by the said Pandolfo, the life insurance companies represented by said agency to pay said Miller regular fees for conducting physical examinations of applicants for life insurance in the respective companies. That in addition to the regular fees for such examinations to

be paid by said companies the said Miller was to receive as part remuneration for his services 5% of the total profits accruing to the life insurance [17] agency through commissions received from the writing of life insurance. That the payment of said 5% of the total profits of the agency was to be secured by a lien on the capital stock of the agency and to be further secured by a lien on commissions earned by the said Pandolfo and a further lien upon the life insurance carried by the said Pandolfo. That the said Pandolfo accepted the sum of \$272.75 but failed and neglected to perform any of the agreements upon his part to be performed, and that the excuse given by the said Pandolfo for such failure was the statement of the said Pandolfo that the Commissioner of Insurance of Texas would not permit the founding of such a business and the further statement that the Commissioner of Banking of Texas required the bank to get rid of such deposits. That the said Miller has paid and discharged the said note, negotiated to the Rio Grande Valley Bank and Trust Company as aforesaid, long since. That although repeated requests have been made by the said Miller to the said Pandolfo for the repayment to him of the sum of \$272.75 interest, the said Pandolfo has refused and neglected to repay said sum or any part thereof.

That during the years 1911 to 1915, inclusive, the said plaintiff, S. C. Pandolfo, conducted at San Antonio, Texas, the S. C. Pandolfo Sales Agency for the purpose of writing life insurance throughout

the State of Texas and adjacent (10) states. Upon information and belief that the said S. C. Pandolfo had during said period general agency contracts with the following life insurance companies: The Cherokee Life Insurance Company of Rome, Georgia, The Great Republic Life Insurance Company of Los Angeles, California, and the Independent Life Insurance Company. That for the purpose of assisting in the financing of the Pandolfo Sales Agency said Pandolfo caused to be issued so-called trust certificates in the following form, to wit:

“TRUST FUND CERTIFICATE.

Number	Dollars. [18]
95	\$250

WHEREAS, S. C. Pandolfo of San Antonio, Texas, has a General Agency Contract with the following companies:

The Cherokee Life Insurance Company, of Rome, Georgia, covering Arizona, New Mexico, and Texas.

The Great Republic Life Insurance Company of Los Angeles, California, covering New Mexico, Oklahoma and Texas.

The Independent Life Insurance Company, of Nashville, Tennessee, covering Arizona, New Mexico, Oklahoma and Texas.

And

WHEREAS, S. C. Pandolfo is desirous of extending and further developing his Agency organization, and materially increasing his production, and for that purpose needs a larger capital, he is

offering for sale Two Hundred (200) Certificates,
And

WHEREAS — of — County of — State
of — has been appointed in —.

(Territory)

THEREFORE S. C. Pandolfo does hereby sell
to the said — — certificates, for (\$—) —
Dollars.

These certificates shall participate in a fund to
be established as follows: On all written, delivered
and paid for business produced after October 1st,
1914, for (10) years, One Dollar (\$1.00) per thou-
sand will be set aside as a special Trust Fund, and
paid to Geo. D. Campbell, San Antonio, Texas,
Trustee, by S. C. Pandolfo on the 10th of every
month, (11) for business thus produced the pre-
ceding month, for equal distribution among the 200
certificates. Term policies to figure one-half ($\frac{1}{2}$).
The fund so created to be divided immediately by
said Trustee into two hundred equal parts, one of
which will be remitted immediately to the regis-
tered holder of this [19] certificate.

Special Bonus.

The holder hereof will receive a commission on
the first year's premiums of 5% on all written and
paid for business, produced by agents appointed by
reason of the efforts and influence of the holder
hereof, the commission to be paid by the Trustees
as above outlined.

Special Guarantee.

If S. C. Pandolfo should retire from the Life In-
surance business, or die, he binds himself, his estate,

heirs and assigns to redeem this certificate at a price that will net the holder par (\$250.00) Two Hundred Fifty Dollars, the price paid for it, and a profit of twenty per cent (20%) per annum from date of issue. For and in consideration of this guarantee, S. C. Pandolfo has the option to purchase at any time within (10) years, this certificate at a price that will net the holder par (\$250.00) Two Hundred Fifty Dollars, the price paid for it, and twenty per cent (20%) per annum from date of issue.

This certificate is issued this — day of —, 19—, at —, State of Texas, and signed without hands and seals.

Registered.

_____,
Trustee.

Seal.”

Upon information and belief that the said Trust Fund mentioned in the said certificates was in fact never created.

That certain of said certificates, or like certificates, or similar certificates, purported to bear the guarantee of the Commonwealth Trust Company of Houston, Texas, and were so caused to be guaranteed by the said Pandolfo for the purpose of adding thereto a fictitious security thereby increasing their salability to the general public. That the said Commonwealth Trust Company was then and prior to the time of the issuance of the said certificates so guaranteed as aforesaid in bad repute

financially and that its said reputation was known or should have been known to the said Pandolfo at and [20] (12) before the sale of said certificates to the persons hereinafter mentioned and to the public generally. That the said Pandolfo sold certain of said certificates to divers and sundry persons, to these, amongst others—S. J. Blythe, A. L. Vidaurri, R. K. Minis, J. S. Penn, J. F. Halsell, T. C. Mann, J. K. Thompson, S. Simon, W. S. Monkhouse, Louis Knippa, W. S. Kelley, C. E. Freeman and Lester H. Barnhill, and collected therefrom as the purchase price thereof amounts aggregating many thousands of dollars and that shortly thereafter the said Pandolfo ceased making payments of the dividends thereon, contrary to the agreements in said certificates contained, and wholly ignored all obligations by him assumed thereunder and the said several purchasers thereof were compelled either to commence and prosecute suits for the collection of the moneys paid thereon or to accept from the said Pandolfo settlement of their several claims arising out of and from the purchase of said certificates varying sums less than the amounts so paid by the purchasers thereon and guaranteed to be repaid by the terms of said certificates.

IX.

That in mitigation of any damages to which the plaintiff might otherwise appear to be entitled by reason of the alleged publication of the claimed libelous matter set forth in said complaint, each defendant separately repeats and renews all and

singular the matters stated in paragraph VIII hereof and will give evidence thereof as a partial defense in mitigation of damages as well as in justification.

X.

Each defendant separately denies each and every allegation in the complaint contained not herein expressly admitted. (13)

WHEREFORE, having fully answered, each defendant separately prays judgment that the said complaint be dismissed [21] as to it and that it recover its costs incurred herein.

Dated: March 15, 1919.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for the Several Defendants.

[Endorsements]: Motions, Demurrers and Answer to Complaint. Copy recd. this 15th day of March, 1919. Alexander & Christy. Filed March 15th, 1919. Mose Drachman, Clerk. By Nat. T. McKee, Deputy. [22]

In the District Court of the United States, for the
District of Arizona.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON et al.,

Defendants.

Motions, Demurrers and Answer of Morris Goldwater to the Amended Complaint.

Comes now the defendant, Morris Goldwater, named in the amended complaint herein, by his attorneys, Armstrong, Lewis & Kramer, and severing as to his defense separately pleads to the said complaint of plaintiff herein as follows:

Motions to Strike.**I.**

Defendant moves the Court to strike from line 29, page 5 of the complaint the words "criminal conduct" as surplusage.

II.

Defendant further moves the Court to strike from the complaint the following words in lines 2, 3, 4 and 5, page 6, of the complaint, to wit: "criminal conduct and practices of embezzlement and theft, and obtaining money under false pretenses in and about the transaction and discharge of financial matters," as surplusage.

III.

Defendant further moves the Court to strike from the complaint the following words in lines 6, 7, and 8, page 6, of said complaint, to wit: "that the plaintiff had been guilty of the violation of the criminal laws of the States of Texas, New Mexico and Arizona" as surplusage. (1)

IV.

Defendant further moves the Court to strike from the complaint the following words found in lines 8, 9 and 10, page 6, of said complaint, to wit:

“and had been guilty of the [23] crimes of embezzlement, theft, larceny, obtaining money under false pretenses” as surplusage.

V.

Defendant further moves the Court to strike from the complaint the following words found in lines 11 and 12, page 6, of said complaint, to wit: “by directly or indirectly unlawfully taking, receiving or obtaining moneys legally belonging to other persons” as surplusage.

Plea in Abatement.

Defendant Morris Goldwater, separately pleads that at the commencement of this action there was and now is another action pending in the District Court of the United States within and for the District of Arizona between the same parties as this action and for the same cause as that set forth in the complaint herein.

WHEREFORE, defendant prays that said action abate as to him and that he be dismissed hence with his costs.

Demurrer.

Defendant Morris Goldwater, separately demurs to said amended complaint upon the ground that said complaint wholly fails to state facts sufficient to constitute a cause of action as against him.

WHEREFORE, defendant prays that said complaint be dismissed as to him and that he recover his costs.

Answer.

Defendant Morris Goldwater, severing in his answer, pleads separately as follows:

I.

That the cause of action stated in the complaint did not accrue within one year before the commencement of this action, and is therefore barred by the provisions of paragraph 709, Revised Statutes of Arizona, 1913.

II.

That the cause of action stated in the complaint as to all publications whatsoever, except as to the alleged publication in May, 1918, which publication is not admitted but expressly [24] denied, did not accrue within one year before the commencement of this action and are, and each of them is, therefore, barred by the provisions of paragraph 709, Revised Statutes of Arizona, 1913.

III.

Defendant, without admitting, but, on the contrary, expressly denying, the publication of the said alleged libelous matter set forth in said complaint, says that prior to May, 1918, the State Securities Commission of the State of Minnesota had, pursuant to the laws of Minnesota in such cases made and provided and in the exercise of its jurisdiction thereunder, issued to a corporation known as the Pan Motor Company an order to show cause why the license of said corporation to sell stock should not be revoked. That Samuel C. Pandolfo, the plaintiff herein, was at said time the president of said Pan Motor Company, and in the course of said investigation the said Commission requested this defendant to give to the said Commission all information in his possession touching

the said character and business record of the said Samuel C. Pandolfo to the end that the said Commission might be fully advised in its action upon said order to show cause. That the said Morris Goldwater had in May, 1918, in his possession a copy of the alleged libelous matter set forth in the complaint herein and he, the said Morris Goldwater, believing in the truth of the information so in his possession, furnished to the said State Securities Commission of Minnesota, as was his duty to do, said information, and that said Goldwater so furnished said information without any malice whatsoever toward the said plaintiff and without the intent to injure the said plaintiff and in confidence to the said Commission alone, without the intent that anything in said matter so furnished by him as aforesaid should become or be made public.

(3) [25]

IV.

Defendant separately denies that he in any way or at any time whatsoever published the alleged libelous matter set forth in said complaint or any part thereof.

V.

Defendant further separately alleges that the Arizona Bankers' Association is a voluntary, unincorporated association, formed by the banks of Arizona in order to promote the general welfare and usefulness of banks and banking institutions and to secure uniformity of action, together with practical benefits to be derived from personal acquaintance and from the discussion of subjects of import-

ance to the banking and commercial interests of this territory and for the protection against loss by crime. That said association is a non-profit association. That the entering into of such association by this defendant corporation is the attempted exercise of a power not granted by its charter and therefore *ultra vires* and utterly void. That by the provisions of the constitution and by-laws of the Arizona Bankers' Association it is expressly provided as follows:

“Sec. 2. No opinions expressed, principles advocated, theories advanced, or politics suggested by any party or person, however presented, shall be deemed to have had the indorsement of this Association except the question of so indorsing shall have been referred to a standing or special Committee; shall have been reported upon by such Committee, and shall have been specifically voted upon receiving a majority of the votes of those present at an open session of a Convention of the Association.

This item of the Constitution shall be published in every report of the proceedings of any convention, and where indorsements are given the fact shall be noted in the report of the proceedings in that behalf.”

That during the year 1916 Samuel C. Pandolfo, the plaintiff in the above-entitled action, was attempting to do business in the State of Arizona and that his business reputation and character was a matter of mutual interest and concern to the members of the Arizona Bankers' Association. That

prior to the annual meeting of the said Association held at Phoenix, Arizona, [26] November 10 and 11, 1916, said time being more than one year prior to the commencement of this action, and any publication thereat being therefore barred by the provisions of paragraph 709, Revised Statutes of Arizona, 1913, the then Secretary of said Association had received a letter regarding the plaintiff Samuel C. Pandolfo, being the letter set forth in said complaint, and the said Secretary, in reliance upon the mutual relation existing between the said members of said Association, in confidence and for the sole benefit and information of the said members and being reliably informed and believing said letter to truly state the facts, in good faith and in pursuance to duty, without malice or intent to injure the plaintiff, read the said letter to the members then present, but that said letter was not referred to a standing or special Committee, was not reported upon by any Committee and was not voted upon, or in any wise adopted, ratified or approved or made a part of the proceedings of said Association.

Defendant separately denies that he published or caused or authorized the publication of the said letter as alleged in said complaint or otherwise or at all, and denies that he had any knowledge of the alleged publication until the filing of the complaint herein, and alleges that he never ratified or in any wise approved the same.

VI.

Without admitting publication, defendant separately denies that he or the said Arizona Bankers'

Association meant or were understood to mean by the alleged libelous matters set forth in the complaint that the plaintiff had been guilty of criminal conduct, or that the plaintiff had been guilty of criminal conduct in practices, of embezzlements and theft, and of obtaining money under false pretenses in and about the transaction and discharge of financial matters, or that the plaintiff had been guilty of violation of the criminal laws of the States of Texas, New Mexico and Arizona, or that the plaintiff had been guilty of the crimes of embezzlement, theft, larceny or obtaining money under false pretenses, or of directly [27] or indirectly unlawfully taking, receiving or obtaining moneys legally belonging to other persons.

VII.

Defendant separately denies that prior to the commission of the several grievances alleged in said complaint to have been committed by the defendant, that plaintiff was either well reputed, esteemed or accepted by and among his neighbors or acquaintances as a person of good name, fame or credit, or as a business man or a corporate officer of honesty, integrity or fidelity, and each defendant separately alleges that the plaintiff's reputation, prior to the alleged publication complained of in the complaint herein, was, in the respects aforesaid, bad.

VIII.

Without admitting, but, on the contrary, expressly denying the publication or circulation of the alleged libelous matter set forth in the complaint herein, in further answer and in justification defendant sepa-

rately avers that the alleged libelous matter complained of is true.

That on or about June 27, 1916, the Department of Insurance and Banking of the State of Texas, acting by and through its Commissioner, John S. Patterson, revoked all licenses as life insurance agent theretofore granted to Samuel C. Pandolfo, plaintiff herein, thereby revoking the privilege of the said Pandolfo of writing insurance in Texas and that said order was made and entered upon account of continuous violation by said Pandolfo of the laws of Texas relating to insurance.

That the Department of Insurance and Banking of the State of Texas, acting by and through its said Commissioner, John S. Patterson, on or about the said 27th day of June, 1916, forbade the banks of the State of Texas from buying so-called trust certificates, hereinafter more particularly described, issued by said Pandolfo.

That the alleged libelous matter charged in the complaint, to wit, that the plaintiff Pandolfo is a crook and that [28] he, the said Pandolfo, has crooked more people in more ways than most any fellow in this part of the country in a long time, was and is true in each and every part thereof, that is to say,

That the said Pandolfo, during the years 1911 and 1912, promoted the Alamo Life Insurance Company. That the said Pandolfo in various parts of the State of Texas during said times and particularly at and about the cities of San Antonio, Alpino, Fort Stockton and El Paso, Texas, and from divers and sundry

persons, amongst others, P. H. Pruett and J. A. Pruett, solicited subscriptions to the capital stock of the said Alamo Life Insurance Company proposed to be organized by the said Pandolfo under the laws of the State of Texas. That each of the defendants separately alleges upon information and belief that the said J. A. Pruett, upon the solicitation of said Pandolfo, subscribed for Five Thousand Dollars worth of the capital stock of the Alamo Life Insurance Company, paying 25% down represented by Two Hundred Fifty Dollars cash and his promissory note for One Thousand Dollars, and that the said Pandolfo claimed the said amount of 25% of the said subscriptions as organization fees and that the said Pruett lost in said transaction Eight Hundred Fifty Dollars, no part of which has ever been returned. That said P. H. Pruett, at the solicitation of said Pandolfo, subscribed for Twenty-five Thousand Dollars worth of the capital stock of the said Alamo Life Insurance Company, and executed and delivered to the said Pandolfo his note therefor, which note has never been paid. That said company was never incorporated.

On information and belief that on or about the 7th day of July, 1915, one Felix P. Miller of El Paso, Texas, then was and now is, a practicing physician and surgeon in said city, was approached by the said plaintiff Pandolfo and that at the solicitation of said Pandolfo the said Felix P. Miller executed and delivered his promissory note in favor of the said Pandolfo, said note being in the sum of Five Hundred Dollars and bearing interest at the rate of 8%

per annum and maturing 6 months after date. [29] That the said note was taken by the said Pandolfo and negotiated by him to the Rio Grande Valley Bank and Trust Company of El Paso, Texas. That in consideration of the making of said note the said Pandolfo agreed with the said Miller as follows: That the sum of \$227.25 was to be deposited in the Rio Grande Valley Bank and Trust Company of El Paso, Texas, at 4% interest, the interest accruing thereon to be applied to the credit of the said Miller until such time as the said interest equalled the sum of \$272.75, or a sum sufficient when added to the principal sum of \$227.25 on deposit to return to Dr. Felix P. Miller the original sum of \$500.00. That the remaining sum of \$272.75, which the said Pandolfo realized through the discounting of the note of the said Miller, was to be devoted by the said Pandolfo to the establishing in El Paso, Texas, of an agency representing three large life insurance companies, said agency to engage in the writing of life insurance. That the said Miller was to be appointed Chief Medical Examiner for the life insurance agency to be formed by the said Pandolfo, the life insurance companies represented by said agency to pay said Miller regular fees for conducting physical examinations of applicants for life insurance in the respective companies. That in addition to the regular fees for such examinations to be paid by said companies the said Miller was to receive as part remuneration for his services 5% of the total profits accruing to the life insurance agency through commissions received from the writing of life insurance.

That the payment of said 5% of the total profits of the agency was to be secured by a lien on the capital stock of the agency and to be further secured by a lien on commissions earned by the said Pandolfo and a further lien upon the life insurance carried by the said Pandolfo. That the said Pandolfo accepted the sum of \$272.75 but failed and neglected to perform any of the agreements upon his part to be performed, and that the excuse given by the said Pandolfo for such failure was the statement of the said Pandolfo that the Commissioner of Insurance of Texas would not permit the founding of such a business and the further statement that the Commissioner of Banking of Texas required the bank to get rid of such deposits. That the said Miller has paid and discharged [30] the said note, negotiated to the said Rio Grande Valley Bank and Trust Company as aforesaid, long since. That although repeated requests have been made by the said Miller to the said Pandolfo for the repayment to him of the sum of \$272.75, interest, the said Pandolfo has refused and neglected to repay said sum or any part thereof.

That during the years 1911 to 1915, inclusive, said plaintiff, S. C. Pandolfo, conducted at San Antonio, Texas, the S. C. Pandolfo Sales Agency for the purpose of writing life insurance throughout the State of Texas and adjacent states. Upon information and belief that the said S. C. Pandolfo had during said period general agency contracts with the following life insurance companies: The Cherokee Life Insurance Company of Rome, Georgia; The Great Re-

public Life Insurance Company of Los Angeles, California, and the Independent Life Insurance Company. That for the purpose of assisting in the financing of the Pandolfo Sales Agency said Pandolfo caused to be issued so-called trust certificates in the following form, to wit:

“TRUST FUND CERTIFICATE.

Number	Dollars
95	\$250

WHEREAS, S. C. Pandolfo of San Antonio, Texas, has a General Agency Contract with the following companies:

The Cherokee Life Insurance Company of Rome, Georgia, covering Arizona, New Mexico and Texas.

The Great Republic Life Insurance Company of Los Angeles, California, covering New Mexico, Oklahoma and Texas.

The Independent Life Insurance Company, of Nashville, Tennessee, covering Arizona, New Mexico, Oklahoma and Texas,

And

WHEREAS, S. C. Pandolfo is desirous of extending and further developing his Agency organization, and materially increasing his production, and for that purpose needs a larger capital, he is offering for sale Two Hundred (200) Certificates,

And

WHEREAS — of — County of — [31]
State of — has been appointed in —.

(Territory)

THEREFORE S. C. Pandolfo does hereby sell to

the said ——— certificates, for (\$——) ———Dollars.

These certificates shall participate in a fund to be established as follows: On all written, delivered and paid for business produced after October 1st, 1914, for ten (10) years, One Dollar (\$1.00) per thousand will be set aside as a special Trust Fund, and paid to Geo. D. Campbell, San Antonio, Texas, Trustee, by S. C. Pandolfo on the 10th of every month, for business thus produced the preceding month, for equal distribution among the 200 certificates. Term policies to figure one-half ($\frac{1}{2}$). The fund so created to be divided immediately by said Trustee into two hundred equal parts, one of which will be remitted immediately to the registered holder of this certificate.

SPECIAL BONUS.

The holder hereof will receive a commission on the first year's premiums of 5% on all written and paid for business, produced by agents appointed by reason of the efforts and influence of the holder hereof, the commission to be paid by the Trustee as above outlined.

SPECIAL GUARANTEE. " ,

If S. C. Pandolfo should retire from the life insurance business, or die, he binds himself, his estate, heirs and assigns to redeem this certificate at a price that will net the holder par (\$250.00) Two Hundred Fifty Dollars, the price paid for it, and a profit of twenty per cent (20%) per annum from date of issue. For and in consideration of this guarantee, S. C. Pandolfo has the option to purchase at any time

within ten (10) years, this certificate at a price that will net the holder par (\$250.00) Two Hundred Fifty Dollars, the price paid for it, and twenty per cent (20%) per annum from date of issue.

This certificate is issued this —— day of ——, 19——, at ——, State of Texas, and signed with our hands and seals.

Registered:

Trustee.

Seal” [32]

Upon information and belief that the said Trust Fund mentioned in the said certificates was in fact never created.

That certain of said certificates, or like certificates, or similar certificates, purported to bear the guarantee of the Commonwealth Trust Company of Houston, Texas, and were so caused to be guaranteed by the said Pandolfo for the purpose of adding thereto a fictitious security thereby increasing their salability to the general public. That the said Commonwealth Trust Company was then and prior to the time of the issuance of the said certificates so guaranteed as aforesaid in bad repute financially and that its said reputation was known or should have been known to the said Pandolfo at and before the sale of said certificates to the persons hereinafter mentioned and to the public generally. That the said Pandolfo sold certain of said certificates to divers and sundry persons, to these, amongst others: S. J. Blythe, A. L. Vidaurri, R. K. Minis, J. S. Penn, J. F. Halsell, T. C.

Mann, J. K. Thompson, S. Simon, W. S. Monkhouse, Louis Knippa, W. S. Kelley, C. E. Freeman and Lester H. Barnhill, and collected therefrom as the purchase price thereof amounts aggregating many thousands of dollars and that shortly thereafter the said Pandolfo ceased making payments of the dividends thereon, contrary to the agreements in said certificates contained, and wholly ignored all obligations by him assumed thereunder and the said several purchasers thereof were compelled either to commence and prosecute suits for the collection of the moneys paid thereon or to accept from the said Pandolfo settlement of their several claims arising out of and from the purchase of said certificates varying sums less than the amounts so paid by the purchasers thereon and guaranteed to be repaid by the terms of said certificates.

IX.

That in mitigation of any damages to which the plaintiff might otherwise appear to be entitled by reason of the alleged publication of the claimed libelous matter set forth in said complaint, defendant separately repeats and renews all and singular the matters stated in paragraph VIII hereof and will [33] give evidence thereof as a partial defense in mitigation of damages as well as in justification.

X.

Defendant separately denies each and every allegation not herein expressly admitted.

WHEREFORE, having fully answered, defendant separately prays judgment that the said com-

plaint be dismissed as to him and that he recover his costs incurred herein.

Dated: March 15, 1919.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for the Defendant Morris Goldwater.

[Endorsements]: Motions, Demurrers and Answer of Morris Goldwater to the Amended Complaint. Received copy of the within this 9th day of May, 1919. Alexander & Christy, Attys. for Plaintiff. Filed May 9, 1919. Mose Drachman, Clerk. By Nat. T. McKee, Deputy. [34]

At a special term, to wit, the special February, 1920, term of the United States District Court for the District of Arizona, held in the courtroom of said court in the Federal Building, in the city of Phoenix, State and District of Arizona, on Tuesday, the 9th day of March, A. D. 1920. Honorable DAVID P. DYER, District Judge for the Eastern District of Missouri, Specially Assigned, Presiding.

(Minute Entry—March 9, 1920.)

No. L-218.—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of Bisbee, a Corporation, Citizens Bank & Trust Co., a Corporation, Miners & Merchants Bank,

a Corporation, Buckeye Valley Bank, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Chandler, a Corporation, Bank of Duncan, a Corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation [35] Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon

Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank, of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,
Defendants.

**Minutes of Court—March 9, 1920—Order Granting
Motion to Strike and Sustaining Demurrer.**

The defendants' motion to strike certain portions of the plaintiff's complaint herein, and defendants' demurrer to said complaint, coming on regularly for hearing on this date, come now, Messrs. Lewis and Bullard, attorneys for the defendants, and Messrs. Alexander and Christy, attorneys for the plaintiff.

Thereupon said motion and demurrer were argued by respective counsel and submitted to the Court, and the same having been duly considered by the Court,—

IT IS ORDERED that said motion to strike be granted and the said demurrer sustained, and that plaintiff be given until the 17th day of March, 1920, to amend his complaint herein. [36]

UNITED STATES OF AMERICA.

District Court of the United States, District of
Arizona.

No. 218—(PHOENIX).

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, et al.,

Defendants.

Notice of Motion for Judgment.

To Samuel C. Pandolfo and Alexander & Christy,
Attorneys for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that you having failed to amend your complaint in the above-entitled action within the time prescribed by the Judge of the above-entitled court, that the defendants herein and each of them will upon the first motion day of the above-entitled court move the above-entitled court and the Judge thereof that judgment be rendered in favor of said defendants and against the plaintiff herein upon the pleadings and the record

on file in said cause, a copy of which motion is hereunto annexed.

ARMSTRONG, LEWIS & KRAMER,
BULLOCK & JACOBS,

Attorneys for Defendants. [37]

UNITED STATES OF AMERICA.

District Court of the United States, District of
Arizona.

No. 218 (PHOENIX).

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of Bisbee, a Corporation, Citizens Bank & Trust Company, a Corporation, Miners & Merchants Bank, a Corporation, Buckeye Valley Bank, a Corporation, Bank of Chandler, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Duncan, a Corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Company, a Corporation, Old Dominion Commercial Company, a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City

Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Company, a Corporation, State Bank of Morencia, a Corporation, Santa Cruz Valley Bank & Trust Company, a Corporation, Sonora Bank & Trust Company, a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Commercial & Trust Company, a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Company, a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Company, a Corporation, Southern Arizona Bank & Trust Company, a Corporation, Willcox Bank & Trust Company, a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank

of Douglas, a Corporation, First National Bank of Nogales, a Corporation, [38] National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, and Yuma National Bank, a Corporation,

Defendants.

Defendants' Motion for Judgment.

WHEREAS, the defendants in the above-entitled action filed their demurrer to plaintiff's complaint in the above-entitled action, and a motion to strike certain portions of said complaint; and

WHEREAS, on the 9th day of March, 1920, said demurrer and said motion came on regularly to be heard in the above-entitled court, and on the hearing thereof Honorable David P. Dyer, the presiding Judge of the above-entitled Court, sustained said demurrer to plaintiff's complaint, and granted said motion to strike certain portions of plaintiff's complaint, and at the time of sustaining said demurrer and granting said motion to strike as aforesaid, said Judge did give plaintiff leave to amend his said complaint within ten (10) days from the said 9th day of March, 1920; and

WHEREAS, plaintiff herein has failed and neglected to amend his complaint as prescribed by leave of the Court so granted as aforesaid;

NOW, THEREFORE, the above-named defendants and each of them move this Honorable Court that judgment be rendered on the pleadings in favor of said defendants, dismissing plaintiff's complaint, and for judgment in favor of said defendants for their costs of suit incurred herein. Said motion is made upon the pleadings and the records on file in the above-entitled cause.

ARMSTRONG, LEWIS & KRAMER,
BULLARD & JACOBS,

Attorneys for Defendants.

[Endorsements]: Notice and Motion for Judgment. Received copy of the within this 9th day of April, 1920. Alexander, Christy & Baxter, Attorney for Plaintiff. Filed April 9, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [39]

At a regular term, to wit, the April, 1920, term of the United States District Court for the District of Arizona, held in the courtroom of said court in the Federal Building, in the city of Phoenix, State and District of Arizona, on Tuesday, the 20th day of April, A. D. 1920. Honorable WILLIAM H. SAWTELLE, District Judge, Presiding.

(Minute Entry and Judgment of April 20, 1920.)

No. L.-218,—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs. .

BANK OF BENSON, a Corporation, Bank of Bisbee, a Corporation, Citizens Bank & Trust Co., a Corporation, Miners & Merchants Bank, a Corporation, Buckeye Valley Bank, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Chandler, a Corporation, Bank of Duncan, a Corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co. a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The

Commercial Bank, a Corporation, Payson
Com. & Trust Co., a Corporation, [40]
Central Bank of Phoenix, a Corporation,
Citizens State Bank, a Corporation, Phoenix
Savings Bank & Trust Co., a Corporation,
Valley Bank, a Corporation, Bank of Ari-
zona, a Corporation, Commercial Trust &
Savings Bank, a Corporation, Yavapai
County Savings Bank, a Corporation, Bank
of Safford, a Corporation, St. Johns State
Bank, a Corporation, San Simon Valley
Bank, a Corporation, Bank of Northern Ari-
zona, a Corporation, Bank of Superior, a
Corporation, Farmers & Merchants Bank, a
Corporation, Citizens Bank, a Corporation,
Merchants Bank & Trust Co., a Corporation,
Southern Arizona Bank & Trust Co., a Cor-
poration, Willcox Bank & Trust Co., a Cor-
poration, Williams State Bank, a Corpora-
tion, Bank of Winslow, a Corporation, Ari-
zona State Bank, a Corporation, First Na-
tional Bank, of Clifton, a Corporation, First
National Bank of Globe, a Corporation, First
National Bank of Douglas, a Corporation,
First National Bank of Nogales, a Corpora-
tion, National Bank of Arizona, a Corpora-
tion, Phoenix National Bank, a Corporation,
Prescott National Bank, a Corporation,
Tempe National Bank, a Corporation, First
National Bank of Tombstone, a Corporation,
Arizona National Bank, a Corporation, Con-
solidated National Bank, a Corporation,

First National Bank of Yuma, a Corporation,
Yuma National Bank, a Corporation,
and Morris Goldwater,

Defendants.

Minutes of Court—April 20, 1920—Judgment.

It appearing to the Court that defendants' motion to strike and demurrer herein were, on the 9th day of March, 1920, regularly heard in the above-entitled court, and that on the hearing thereof Honorable David P. Dyer, United States District Judge for the District of Arizona (Specially Assigned), then presiding over the above-entitled court, granted defendants' said motion to strike certain portions of plaintiff's complaint, and sustained defendants' demurrer to said complaint, and that at the time of granting said motion to strike and sustaining said demurrer as aforesaid, said plaintiff was given until the 17th day of March, 1920, to amend his complaint, and, [41]

WHEREAS, it further appears to this Court that the plaintiff herein has failed and neglected to amend his complaint as aforesaid,

NOW, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby rendered in favor of the defendants herein and against the plaintiff herein, and that the plaintiff's complaint herein be and the same is hereby dismissed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said defendants' do have and recover of and from the plaintiff herein their costs herein, taxed at the sum of \$——. [42]

In the District Court of the United States in and
for the District of Arizona.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of
Bisbee, a Corporation, Citizens Bank & Trust
Co., a Corporation, Miners & Merchants
Bank, a Corporation, Buckeye Valley Bank,
a Corporation, Casa Grande Valley Bank, a
Corporation, Bank of Chandler, a Corpora-
tion, Bank of Duncan, a Corporation, Bank
of Douglas, a Corporation, Arizona Central
Bank, a Corporation, The Citizens Bank, a
Corporation, Glendale State Bank, a Corpo-
ration, Security State Bank, a Corporation,
Pinal Bank & Trust Co., a Corporation, Old
Dominion Com. Co., a Corporation, Mer-
chants & Stock Growers Bank, a Corpora-
tion, Holbrook State Bank, a Corporation,
Bank of Jerome, a Corporation, Bank of
Lowell, a Corporation, Mesa City Bank, a
Corporation, Salt River Valley Bank, a Cor-
poration, State Bank of Metcalf, a Corpora-
tion, Bank of Miami, a Corporation, Gila
Valley Bank & Trust Co., a Corporation,
State Bank of Morenci, a Corporation, Santa
Cruz Valley Bank & Trust Co., a Corpora-
tion, Sonora Bank & Trust Co., a Corpora-

tion, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers [43] & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corpo-

ration, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,

Defendants.

Petition for Writ of Error and Order Allowing Same.

To the Honorable WILLIAM H. SAWTELLE,
Judge of said Court:

And now comes Samuel C. Pandolfo, plaintiff, by Jones, Hocker, Sullivan & Angert and Alexander, Christy & Baxter, his attorneys, and feeling himself aggrieved by the final judgment of this court entered against him and in favor of the defendants herein on the 20th day of April, 1920, hereby prays that writ of error may be allowed to him from the United States Circuit Court of Appeals for the Ninth Circuit, to the District Court for the District of Arizona, and in connection with this petition petitioner herewith presents his assignments of error.

Petitioner further prays that the amount of security be fixed by the order allowing the writ of error.

JONES, HOCKER, SULLIVAN &
ANGERT,

ALEXANDER & CHRISTY,

Attorneys for Plaintiff in Error. [44]

Phoenix, Arizona, Sept. 20, 1920.

And now, to wit, on Sept. 20, 1920, it is ORDERED that the writ of error be allowed as

prayed for and bond on writ of error is hereby fixed at \$500.00.

WM. H. SAWTELLE,
District Judge.

[Endorsement]: Petition for Writ of Error.
Filed Sept. 20, 1920. C. R. McFall, Clerk United
States District Court for the District of Arizona.
[45]

In the District Court of the United States, in and
for the District of Arizona.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of
Bisbee, a Corporation, Citizens Bank & Trust
Co., a Corporation, Miners & Merchants
Bank, a Corporation, Buckeye Valley Bank,
a Corporation, Casa Grande Valley Bank, a
Corporation, Bank of Chandler, a Corpora-
tion, Bank of Duncan, a Corporation, Bank
of Douglas, a Corporation, Arizona Central
Bank, a Corporation, The Citizens Bank, a
Corporation, Glendale State Bank, a Corpo-
ration, Security State Bank, a Corporation,
Pinal Bank & Trust Co., a Corporation,
Old Dominion Com. Co., a Corporation,
Merchants & Stock Growers Bank, a Corpo-
ration, Holbrook State Bank, a Corporation,

Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers [46] & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation,

First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,

Defendants.

Assignments of Error.

And now comes the plaintiff in error, by Jones, Hocker, Sullivan & Angert, and Alexander, Christy & Baxter, his attorneys, and in connection with his petition for a writ of error says that in the record proceedings and in the final judgment aforesaid, manifest error has intervened to the prejudice of the plaintiff in error, to wit:

1. The Court erred in sustaining the motions to strike of the defendants below the following words from plaintiff's petition as surplusage, to wit:

a. From line 24, page 5, "criminal conduct."

b. From lines 30, 31, and 32, page 5, and line 1, page 6, "criminal conduct and practices of embezzlement and theft and obtaining money under false pretences in and about the transaction and discharge of financial matters."

c. From lines 2, 3 and 4, page 6, "that the plaintiff had been guilty of the violation of the criminal laws of [47] the States of Texas, New Mexico and Arizona."

d. From lines 4, 5 and 6, page 6, "and had been guilty of the crimes of embezzlement, theft, larceny, obtaining money under false pretences."

e. From lines 7, 8 and 9, page 6, "by directly or indirectly unlawfully taking, receiving or obtaining money legally belonging to other persons."

2. The Court erred in sustaining the demurrer of the defendants below to the petition of the plaintiff below and plaintiff in error herein.

By reason whereof the plaintiff in error prays that the judgment aforesaid may be reversed, etc.

JONES, HOCKER, SULLIVAN &
ANGERT,

ALEXANDER & CHRISTY,

Attorneys for Plaintiff in Error.

[Endorsements]: Assignments of Error. Filed Sept. 20, 1920. C. R. McFall, Clerk, United States District Court for the District of Arizona. [48]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Samuel C. Pandolfo, as principal, and the National Surety Company, a corporation duly authorized and qualified under the laws of the United States to become surety herein, as surety, are held and firmly bound unto the Bank of Benson, a corporation, Bank of Bisbee, a corporation, Citi-

zens Bank & Trust Co., a corporation, Miners & Merchants Bank, a corporation, Buckeye Valley Bank, a corporation, Casa Grande Valley Bank, a corporation, Bank of Chandler, a corporation, Bank of Duncan, a corporation, Bank of Douglas, a corporation, Arizona Central Bank, a corporation, The Citizens Bank, a corporation, Glendale State Bank, a corporation, Security State Bank, a corporation, Pinal Bank & Trust Co., a corporation, Old Dominion Com. Co., a corporation, Merchants & Stock Growers Bank, a corporation, Holbrook State Bank, a corporation, Bank of Jerome, a corporation, Bank of Lowell, a corporation, Mesa City Bank, a corporation, Salt River Valley Bank, a corporation, State Bank of Metcalf, a corporation, Bank of Miami, a corporation, Gila Valley Bank & Trust Co., a corporation, State Bank of Morenci, a corporation, Santa Cruz Valley Bank & Trust Co., a corporation, Sonora Bank & Trust Co., a corporation, Bank of Oatman, a corporation, The Commercial Bank, a corporation, Payson Com. & Trust Co., a corporation, Central Bank of Phoenix, a corporation, Citizens State Bank, a corporation, Phoenix Savings Bank & Trust Co., a corporation, Valley Bank, a corporation, Bank of Arizona, a corporation, Commercial Trust & Savings Bank, a corporation, Yavapai County Savings Bank, a corporation, Bank of Safford, a corporation, St. Johns State Bank, a corporation, San Simon Valley Bank, a corporation, Bank of Northern Arizona, a corporation, Bank of Superior, a corporation, Farmers & Merchants Bank, a corporation, Citizens Bank,

a corporation, [49] Merchants Bank & Trust Co., a corporation, Southern Arizona Bank & Trust Co., a corporation, Willcox Bank & Trust Co., a corporation, Williams State Bank, a corporation, Bank of Winslow, a corporation, Arizona State Bank, a corporation, First National Bank of Clifton, a corporation, First National Bank of Globe, a corporation, First National Bank of Douglas, a corporation, First National Bank of Nogales, a corporation, National Bank of Arizona, a corporation, Phoenix National Bank, a corporation, Prescott National Bank, a corporation, Tempe National Bank, a corporation, First National Bank of Tombstone, a corporation, Arizona National Bank, a corporation, Consolidated National Bank, a corporation, First National Bank of Yuma, a corporation, Yuma National Bank, a corporation, and Morris Goldwater, in the full and just sum of Five Hundred Dollars (\$500.00), to be paid to said Bank of Benson, a corporation, Bank of Bisbee, a corporation, Citizens Bank & Trust Co., a corporation, Miners & Merchants Bank, a corporation, Buckeye Valley Bank, a corporation, Casa Grande Valley Bank, a corporation, Bank of Chandler, a corporation, Bank of Duncan, a corporation, Bank of Douglas, a corporation, Arizona Central Bank, a corporation, The Citizens Bank, a corporation, Glendale State Bank, a corporation, Security State Bank, a corporation, Pinal Bank & Trust Co., a corporation, Old Dominion Com. Co., a corporation, Merchants & Stock Growers Bank, a corporation, Holbrook State Bank, a corporation, Bank of

Jerome, a corporation, Bank of Lowell, a corporation, Mesa City Bank, a corporation, Salt River Valley Bank, a corporation, State Bank of Metcalf, a corporation, Bank of Miami, a corporation, Gila Valley Bank & Trust Co., a corporation, State Bank of Morenci, a corporation, Santa Cruz Valley Bank & Trust Co., a corporation, Sonora Bank & Trust Co., a corporation, Bank of Oatman, a corporation, The Commercial Bank, a corporation, Payson Com. & Trust Co., a corporation, Central Bank of Phoenix, a corporation, Citizens [50] State Bank, a corporation, Phoenix Savings Bank & Trust Co., a corporation, Valley Bank, a corporation, Bank of Arizona, a corporation, Commercial Trust & Savings Bank, a corporation, Yavapai County Savings Bank, a corporation, Bank of Safford, a corporation, St. Johns State Bank, a corporation, San Simon Valley Bank, a corporation, Bank of Northern Arizona, a corporation, Bank of Superior, a corporation, Farmers & Merchants Bank, a corporation, Citizens Bank, a corporation, Merchants Bank & Trust Co., a corporation, Southern Arizona Bank & Trust Co., a corporation, Willcox Bank & Trust Co. a corporation, Williams State Bank, a corporation, Bank of Winslow, a corporation, Arizona State Bank, a corporation, First National Bank, of Clifton, a corporation, First National Bank of Globe, a corporation, First National Bank of Douglas, a corporation, First National Bank of Nogales, a corporation, National Bank of Arizona, a corporation, Phoenix National Bank, a corporation, Prescott National Bank, a

corporation, Tempe National Bank, a corporation, First National Bank of Tombstone, a corporation, Arizona National Bank, a corporation, Consolidated National Bank, a corporation, First National Bank of Yuma, a corporation, Yuma National Bank, a corporation, and Morris Goldwater, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents. Sealed with our seals and dated this 20th day of September, 1920.

WHEREAS, lately at a term of the District Court of the United States for the District of Arizona, in a suit pending in said court between Samuel C. Pandolfo and Bank of Benson, a corporation, Bank of Bisbee, a corporation, Citizens Bank & Trust Co., a corporation, Miners & Merchants Bank, a corporation, Buckeye Valley Bank, a corporation, Casa Grande [51] Valley Bank, a corporation, Bank of Chandler, a corporation, Bank of Duncan, a corporation, Bank of Douglas, a corporation, Arizona Central Bank, a corporation, The Citizens Bank, a corporation, Glendale State Bank, a corporation, Security State Bank, a corporation, Pinal Bank & Trust Co., a corporation, Old Dominion Com. Co., a corporation, Merchants & Stock Growers Bank, a corporation, Holbrook State Bank, a corporation, Bank of Jerome, a corporation, Bank of Lowell, a corporation, Mesa City Bank, a corporation, Salt River Valley Bank, a corporation, State Bank of Metcalf,

a corporation, Bank of Miami, a corporation, Gila Valley Bank & Trust Co., a corporation, State Bank of Morenci, a corporation, Santa Cruz Valley Bank & Trust Co., a corporation, Sonora Bank & Trust Co., a corporation, Bank of Oatman, a corporation, The Commercial Bank, a corporation, Payson Com. & Trust Co., a corporation, Central Bank of Phoenix, a corporation, Citizens State Bank, a corporation, Phoenix Savings Bank & Trust Co., a corporation, Valley Bank, a corporation, Bank of Arizona, a corporation, Commercial Trust & Savings Bank, a corporation, Yavapai County Savings Bank, a corporation, Bank of Safford, a corporation, St. Johns State Bank, a corporation, San Simon Valley Bank, a corporation, Bank of Northern Arizona, a corporation, Bank of Superior, a corporation, Farmers & Merchants Bank, a corporation, Citizens Bank, a corporation, Merchants Bank & Trust Co., a corporation, Southern Arizona Bank & Trust Co., a corporation, Willcox Bank & Trust Co., a corporation, Williams State Bank, a corporation, Bank of Winslow, a corporation, Arizona State Bank, a corporation, First National Bank, of Clifton, a corporation, First National Bank of Globe, a corporation, First National Bank of Douglas, a corporation, First National Bank of Nogales, a corporation, National Bank of Arizona, a corporation, Phoenix National Bank, a corporation, Prescott National Bank, a corporation, Tempe National Bank, a [52] corporation, First National Bank of Tombstone, a corporation, Arizona National Bank, a corporation, Consolidated Na-

tional Bank, a corporation, First National Bank of Yuma, a corporation, Yuma National Bank, a corporation, and Morris Goldwater, a judgment was rendered against the said Samuel C. Pandolfo dismissing his petition with costs and the said Samuel C. Pandolfo having obtained a writ of error from the Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the aforesaid suit.

NOW, the condition of the above obligation is such that if the said Samuel C. Pandolfo shall prosecute his writ of error to effect and will answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAMUEL C. PANDOLFO. (Seal)

NATIONAL SURETY CO. (Seal)

By B. C. STURGES,

By MARJORIE KINGSBERRY,

Attorneys in Fact.

Sealed and delivered in the presence of

Approved by

[Seal] WM. H. SAWTELLE,

Judge.

[Endorsements]: Bond on Writ of Error. Filed Sept. 20, 1920. C. R. McFall, Clerk United States District Court for the District of Arizona. [53]

**Writ of Error from Circuit Court of Appeals to
United States District Court for the District of
Arizona (Copy).**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America,
to the Judges of the District Court of the
United States for the District of Arizona,
GREETING:

Because in the record and proceedings, as also
in the rendition of the judgment of a plea which
is in the said District Court, before you, or some
of you, between Samuel C. Pandolfo, plaintiff, and
the Bank of Benson, a corporation, Bank of Bisbee,
a corporation, Citizens Bank & Trust Co., a corpo-
ration, Miners & Merchants Bank, a corporation,
Buckeye Valley Bank, a corporation, Casa Grande
Valley Bank, a corporation, Bank of Chandler, a
corporation, Bank of Duncan, a corporation, Bank
of Douglas, a corporation, Arizona Central Bank,
a corporation, The Citizens Bank, a corporation,
Glendale State Bank, a corporation, Security State
Bank, a corporation, Pinal Bank & Trust Co., a
corporation, Old Dominion Com. Co., a corporation,
Merchants & Stock Growers Bank, a corporation,
Holbrook State Bank, a corporation, Bank of
Jerome, a corporation, Bank of Lowell, a corpora-
tion, Mesa City Bank, a corporation, Salt River
Valley Bank, a corporation, State Bank of Metcalf,
a corporation, Bank of Miami, a corporation, Gila
Valley Bank & Trust Co., a corporation, State
Bank of Morenci, a corporation, Santa Cruz Valley

Bank & Trust Co., a corporation, Sonora Bank & Trust Co., a corporation, Bank of Oatman, a corporation, The Commercial Bank, a corporation, Payson Com. & Trust Co., a corporation, Central Bank of Phoenix, a corporation, Citizens State Bank, a corporation, Phoenix Savings Bank & Trust Co., a corporation, Valley Bank, a corporation, Bank of Arizona, a corporation, Commercial Trust [54] & Savings Bank, a corporation, Yavapai County Savings Bank, a corporation, Bank of Safford, a corporation, St. Johns State Bank, a corporation, San Simon Valley Bank, a corporation, Bank of Northern Arizona, a corporation, Bank of Superior, a corporation, Farmers & Merchants Bank, a corporation, Citizens Bank, a corporation, Merchants Bank & Trust Co., a corporation, Southern Arizona Bank & Trust Co., a corporation, Willcox Bank & Trust Co., a corporation, Williams State Bank, a corporation, Bank of Winslow, a corporation, Arizona State Bank, a corporation, First National Bank, of Clifton, a corporation, First National Bank of Globe, a corporation, First National Bank, of Douglas, a corporation, First National Bank of Nogales, a corporation, National Bank of Arizona, a corporation, Phoenix National Bank, a corporation, Prescott National Bank, a corporation, Tempe National Bank, a corporation, First National Bank of Tombstone, a corporation, Arizona National Bank, a corporation, Consolidated National Bank, a corporation, First National Bank of Yuma, a corporation, Yuma National Bank, a corporation, and

Morris Goldwater, defendants, a manifest error hath happened to the great damage of the said Samuel C. Pandolfo, as is said and appears by the complaint:

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said court in the city of San Francisco, State of California, together with this writ, so that you have the same at said place before the Justices aforesaid, on the twentieth day of October next, that the record and proceedings [55] aforesaid being inspected, the said Justices of said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 20th day of September, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

C. R. McFALL,
Clerk of United States District Court for the
District of Arizona.

The foregoing writ is hereby allowed.

District Judge. [56]

Return of Writ of Error (Copy).

United States District Court,
For the District of Arizona,—ss.

In obedience to the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit, a true and complete transcript of the record and proceedings in the foregoing entitled cause this 18th day of October, 1920.

[Seal] C. R. McFALL,
Clerk of the District Court of the United States,
for the District of Arizona.

[Endorsements]: Writ of Error from Circuit Court of Appeals to United States District Court for the District of Arizona. Filed Sept. 20, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [57]

In the District Court of the United States Within
and for the District of Arizona, at Phoenix.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of
Bisbee, a Corporation, Citizens Bank & Trust
Co., a Corporation, Miners & Merchants

Bank, a Corporation, Buckeye Valley Bank, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Chandler, a corporation, Bank of Duncan, a corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Cor-

poration, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers [58] & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,

Defendants.

Citation (Copy).

City of San Francisco,

State of California,

United States of America,—ss.

The President of the United States to Bank of Benson, a Corporation, Bank of Bisbee, a

Corporation, Citizens Bank & Trust Co., a Corporation Miners & Merchants Bank, a Corporation, Buckeye Valley Bank, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Chandler, a Corporation, Bank of Duncan, a Corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a (2) [59] Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank,

a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the (3) [60] Ninth Circuit, at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error duly allowed by the District Court of the United States, in and for the District of Arizona, and filed in the clerk's office of said court on the

20th day of September, 1920, in a cause wherein Samuel C. Pandolfo is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the party in that behalf.

WITNESS, the Honorable WM. H. SAWTELLE, Judge of the District Court of the United States in and for the District of Arizona, this 20th day of Sept., 1920.

WM. H. SAWTELLE,
District Judge.

[Seal]

Attest: C. R. McFALL,
Clerk.

By Clyde C. Downing,
Deputy Clerk.

Service of the within citation and receipt of a copy is hereby admitted this 20th day of Sept., 1920.

ARMSTRONG, LEWIS & KRAMER,
BULLARD & JACOBS,
Attorneys for Defendants in Error. (4)

[Endorsements]: Citation. Filed September 20, 1920. C. R. McFall, Clerk United States District Court for the District of Arizona. [61]

In the District Court of the United States for the
District of Arizona.

LAW 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, BANK OF
BISBEE, a Corporation, CITIZENS BANK
& TRUST CO., a Corporation, et al.,
Defendants.

Praeceptum for Transcript of Record.

The clerk of this court is hereby directed to prepare and certify a transcript of the record in the above-entitled case for the use of the United States Circuit Court of Appeals for the Ninth Circuit, by including therein the following:

1. Plaintiff's amended petition.
2. Defendants' motions, demurrers and answer to petition.
3. Motions, demurrers and answer of defendant Morris Goldwater to amended petition.
4. Order sustaining motions to strike.
5. Order sustaining demurrers.
6. Judgment.
7. Petition for writ of error with order granting same.
8. Assignments of error.
9. Bond on writ of error.
10. Citation.

and such other papers, records, and orders filed and made in connection with the above-entitled case.

Dated this 20th day of September, 1920.

JONES, HOCKER, SULLIVAN & AN-
GERT,

ALEXANDER & CHRISTY,

Attorneys for Plaintiff in Error.

Service of the within praecipe of record and receipt of a copy is hereby admitted this 21st day of Sept., 1920.

ARMSTRONG, LEWIS & KRAMER,
BULLARD & JACOBS,

Attorneys for Defendants in Error.

[Endorsements]: Praecipe for Record. Filed Sept. 20, 1920. C. R. McFall, Clerk United States District Court for the District of Arizona. [62]

In the District Court of the United States for the
District of Arizona.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, et al.,
Defendants.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of

the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said court, including the records, papers and files in the case of Samuel C. Pandolfo, Plaintiff, versus Bank of Benson, a Corporation et al., Defendants, said case being number 218—Law (Phoenix) on the docket of said court.

I further certify that the foregoing 63 pages, numbered from 1 to 63, inclusive, constitute a full, true and correct copy of the record, and of the assignment of errors and all proceedings in the above-entitled cause, as set forth in the praecipe filed in said cause and made a part of this transcript as the same appears from the originals of record and on file in my office as such clerk.

And I further certify that there is also annexed to said transcript the original writ of error and the original citation issued in said cause.

I further certify that the cost of preparing and certifying to said record, amounting to Nineteen and 70/100 Dollars (\$19.70), has been paid to me by the above-named plaintiff.

WITNESS my hand and the seal of said court this 18th day of October, 1920.

[Seal]

C. R. McFALL,

Clerk of the District Court of the United States for
the District of Arizona. [63]

**Writ of Error from Circuit Court of Appeals to
United States District Court for the District of
Arizona (Original).**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Judges of the District Court of the United
States for the District of Arizona, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court, before you, or some of you,
between Samuel C. Pandolfo, plaintiff, and the Bank
of Benson, a Corporation, Bank of Bisbee, a Cor-
poration, Citizens Bank & Trust Co., a Corporation,
Miners & Merchants Bank, a Corporation, Buckeye
Valley Bank, a Corporation, Casa Grande Valley
Bank, a Corporation, Bank of Chandler, a Corpora-
tion, Bank of Duncan, a Corporation, Bank of Doug-
las, a Corporation, Arizona Central Bank, a Corpora-
tion, The Citizens Bank, a Corporation, Glendale
State Bank, a Corporation, Security State Bank, a
Corporation, Pinal Bank & Trust Co., a Corporation,
Old Dominion Com. Co., a Corporation, Merchants &
Stock Growers Bank, a Corporation, Holbrook
State Bank, a Corporation, Bank of Jerome, a Cor-
poration, Bank of Lowell, a Corporation, Mesa City
Bank, a Corporation, Salt River Valley Bank, a Cor-
poration, State Bank of Metcalf, a Corporation,
Bank of Miami, a Corporation, Gila Valley Bank &
Trust Co., a Corporation, State Bank of Morenci,
a Corporation, Santa Cruz Valley Bank & Trust Co.,
a Corporation, Sonora Bank & Trust Co., a Corpora-

tion, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust [64] & Savins Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater, defendants, a manifest error hath happened to the great damage of the said Samuel C.

Pandolfo, as is said and appears by the complaint:

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of the said court in the city of San Francisco, State of California, together with this writ, so that you have the same at said place before the Justices aforesaid, on the twentieth day of October next, that the record and proceedings [65] aforesaid being inspected, the said Justices of said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 20th day of September, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

[Seal]

C. R. McFALL,

Clerk of United States District Court for the District of Arizona.

The foregoing writ is hereby allowed.

District Judge. [66]

Return of Writ of Error (Original).

United States District Court,
For the District of Arizona,—ss.

In obedience to the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Ninth Circuit a true and complete transcript of the record and proceedings in the foregoing entitled cause this 18th day of October, 1920.

[Seal] C. R. McFALL,
Clerk of the District Court of the United States, for
the District of Arizona. [67]

[Endorsed]: No. 218—Phoenix. In the District Court of the United States Within and for the District of Arizona. Samuel C. Pandolfo, Plaintiff, vs. Bank of Benson, a Corporation, Bank of Bisbee, a Corporation, Citizens Bank & Trust Co., a Corporation, et al., Defendants. Writ of Error from Circuit Court of Appeals to United States District Court for the District of Arizona. Filed Sept. 20, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [68]

In the District Court of the United States Within
and for the District of Arizona at Phoenix.

LAW—No. 218—PHOENIX.

SAMUEL C. PANDOLFO,

Plaintiff,

vs.

BANK OF BENSON, a Corporation, Bank of
Bisbee, a Corporation, Citizens Bank & Trust
Co., a Corporation, Miners & Merchants
Bank, a Corporation, Buckeye Valley Bank,
a Corporation, Casa Grande Valley Bank, a
Corporation, Bank of Chandler, a Corpora-
tion, Bank of Duncan, a Corporation, Bank
of Douglas, a Corporation, Arizona Central
Bank, a Corporation, The Citizens Bank, a
Corporation, Glendale State Bank, a Corpo-
ration, Security State Bank, a Corporation,
Pinal Bank & Trust Co., a Corporation, Old
Dominion Com. Co., a Corporation, Mer-
chants & Stock Growers Bank, a Corpora-
tion, Holbrook State Bank, a Corporation,
Bank of Jerome, a Corporation, Bank of
Lowell, a Corporation, Mesa City Bank, a
Corporation, Salt River Valley Bank, a Cor-
poration, State Bank of Metcalf, a Corpora-
tion, Bank of Miami, a Corporation, Gila
Valley Bank & Trust Co., a Corporation,
State Bank of Morenci, a Corporation, Santa
Cruz Valley Bank & Trust Co., a Corporation,

Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a Corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, [69] Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank, of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone,

a Corporation, Arizona National Bank, a Corporation, Consolidated National Bank, a Corporation, First National Bank of Yuma, a Corporation, Yuma National Bank, a Corporation, and Morris Goldwater,

Defendants.

Citation (Original).

City of San Francisco,

State of California,

United States of America,—ss.

The President of the United States, to Bank of Benson, a Corporation, Bank of Bisbee, a Corporation, Citizens Bank & Trust Co., a Corporation, Miners & Merchants Bank, a Corporation, Buckeye Valley Bank, a Corporation, Casa Grande Valley Bank, a Corporation, Bank of Chandler, a Corporation, Bank of Duncan, a Corporation, Bank of Douglas, a Corporation, Arizona Central Bank, a Corporation, The Citizens Bank, a Corporation, Glendale State Bank, a Corporation, Security State Bank, a Corporation, Pinal Bank & Trust Co., a Corporation, Old Dominion Com. Co., a Corporation, Merchants & Stock Growers Bank, a Corporation, Holbrook State Bank, a Corporation, Bank of Jerome, a Corporation, Bank of Lowell, a [70] Corporation, Mesa City Bank, a Corporation, Salt River Valley Bank, a Corporation, State Bank of Metcalf, a Corporation, Bank of Miami, a Corporation, Gila Valley Bank & Trust Co., a Corporation, State Bank

of Morenci, a Corporation, Santa Cruz Valley Bank & Trust Co., a Corporation, Sonora Bank & Trust Co., a Corporation, Bank of Oatman, a Corporation, The Commercial Bank, a Corporation, Payson Com. & Trust Co., a Corporation, Central Bank of Phoenix, a Corporation, Citizens State Bank, a Corporation, Phoenix Savings Bank & Trust Co., a Corporation, Valley Bank, a Corporation, Bank of Arizona, a Corporation, Commercial Trust & Savings Bank, a Corporation, Yavapai County Savings Bank, a Corporation, Bank of Safford, a corporation, St. Johns State Bank, a Corporation, San Simon Valley Bank, a Corporation, Bank of Northern Arizona, a Corporation, Bank of Superior, a Corporation, Farmers & Merchants Bank, a Corporation, Citizens Bank, a Corporation, Merchants Bank & Trust Co., a Corporation, Southern Arizona Bank & Trust Co., a Corporation, Willcox Bank & Trust Co., a Corporation, Williams State Bank, a Corporation, Bank of Winslow, a Corporation, Arizona State Bank, a Corporation, First National Bank of Clifton, a Corporation, First National Bank of Globe, a Corporation, First National Bank of Douglas, a Corporation, First National Bank of Nogales, a Corporation, National Bank of Arizona, a Corporation, Phoenix National Bank, a Corporation, Prescott National Bank, a Corporation, Tempe National Bank, a Corporation, First National Bank of Tombstone, a Corporation, Arizona National Bank, a Corporation,

Consolidated National Bank, a Corporation,
First National Bank of Yuma, a Corporation,
Yuma National Bank, a Corporation, and
Morris Goldwater, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the [71] Ninth Circuit, at the city of San Francisco, State of California within thirty days from the date of this writ, pursuant to a writ of error duly allowed by the District Court of the United States, in and for the District of Arizona, and filed in the clerk's office of said court on the 20th day of September, 1920, in a cause wherein Samuel C. Pandolfo is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the party in that behalf.

WITNESS, The Honorable WM. H. SAWTELLE, Judge of the District Court of the United States in and for the District of Arizona, this 20th day of Sept. 1920.

WM. H. SAWTELLE,
District Judge.

[Seal]

Attest: C. R. McFALL,
Clerk.

By Clyde C. Downing,
Deputy Clerk.

Service of the within citation and receipt of a copy is hereby admitted this 20th day of Sept. 1920.

ARMSTRONG, LEWIS & KRAMER,
BULLARD & JACOBS,

Attorneys for Defendants in Error. [72]

[Endorsed]: Law—No. 218—Phoenix. In the District Court of the United States, in and for the District of Arizona. Samuel C. Pandolfo, Plaintiff, vs. Bank of Benson, a Corporation, et al., Defendants. Citation. Filed September 20, 1920. C. R. McFall, Clerk United States District Court for the District of Arizona.

[Endorsed]: No. 3589. United States Circuit Court of Appeals for the Ninth Circuit. Samuel C. Pandolfo, Plaintiff in Error, vs. Bank of Benson, a Corporation, et al., Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Filed October 20, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.